137

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ.

Writ Petition No. 1924 of 2006

PETITIONER		**M/s. Basant Roadways** Through Proprietor Arun Agrawal S/o. Shri Radheshyam Agrawal, Aged 43 years Ghuragedi Road, P.O. Ambikapur, District Sarguja (C.G.)
	Vs.	
RESPONDENTS	1.	State Transport Authority, Raipur
	2.	State Transport Appellate Tribunal, Raipur
	3.	Hirdiyanand Tiwari, S/o. Shri Nageshwar Tiwari, Namnakala, Distt. Ambikapur (C.G.)

Present: Shri Ajay Shrivastava, learned counsel for the petitioner.
Shri Sanjay S. Agrawal, learned G.A. for respondents 1 and 2.
Shri A.K. Tiwari, learned counsel for respondent No.3.
Shri D.P. Agrawal, learned counsel for the intervener.

ORAL ORDER
(Passed on 11th September, 2006)

The application made by the third respondent for grant of regular permit on the route Ambikapur to Gaya via Rajapur, Balrampur, Ramanujganj, Garwaroad, Aurangabad and return to the State Transport Authority, the first respondent herein was rejected by the first respondent on the ground that there was no vacancy on the route sought by the third respondent and also on the ground that there is no reciprocal agreement between the State of Chhattisgarh, State of Jharkhand and State of Bihar. The third respondent herein, feeling aggrieved by the above order of the first respondent dated 17.03.2005, preferred appeal No.17 of 2005 to the STAT, Raipur, the second respondent herein. The second respondent, by

138

its order dated 04.04.2006 allowed the appeal and granted permit to the third respondent on the ground that as on the date of application of the third respondent and also on the date of the order of the first respondent there were vacancies on the route. Feeling aggrieved by the above order of the STAT, the objector has preferred this writ petition under Articles 226 and 227 of the Constitution of India.

(2) I heard the learned counsel for the parties. It was contended by the learned counsel for the petitioner is that the finding of the STAT that there were two vacancies on the route is factually incorrect and in fact, there were no vacancies nor was there any reciprocal agreement between the three States aforesaid. Learned counsel appearing for the third respondent, *per contra*, placing reliance on the notification issued by the Madhya Pradesh Government dated 30.07.1996 marked as Annexure-R/7 produced along with the return of the third respondent would submit that in fact, there were vacancies and therefore, STAT is justified in granting the permit. Learned Government Advocate and learned Additional Advocate General would submit that Annexure-R/7 is only a draft notification and not final notification, and that in pursuance of Annexure-R/7 notification no final notification was issued.

(3) It is common case of all the parties that in the absence of permits and in absence of reciprocal agreement between the States, no permit for the route in question could have been granted. However, it is the case of the 3rd respondent that there existed vacancies even after the formation of new State of Chhattisgarh and new State of Jharkhand and since the earlier reciprocal agreements entered into between the undivided States of Madhya Pradesh and Bihar would bind the new State of Chhattisgarh and new State of Jharkhand, there was nothing wrong on the part of the

139

STAT to grant the permit to the third respondent. The question is whether the above contention of the learned counsel appearing for the third respondent is tenable in law. The failure or success of the 3rd respondent very much depends upon what is the nature of Annexure-R/7 notification. In other words, whether that notification is a final notification or only draft notification containing a proposal. A perusal of Annexure-R/7 would show that notification was a draft notification containing a proposal . The third respondent has not produced final notification for two more permits. It is also the case of the Government and the statutory authorities that there existed no permits. It was the burden of the 3rd respondent to satisfactorily prove that as on the date of grant of permit by the STAT, there existed vacancies in the sanctioned permits. Except Annexure-R/7, the third respondent has not produced any other notification to show that in pursuance of the Annexure-R/7 notification, final notification was issued creating more permits. Furthermore, admittedly, after the formation of the new State of Chhattisgarh and the new State of Jharkhand, no reciprocal agreement has been entered into between the three concerned States, that is to say, State of Bihar, State of Jharkhand and State of Chhattisgarh. The order passed by the STAT impugned in this writ petition is based on a wrong assumption that Annexure-R/7 is a final notification. Before parting with this case, an observation made by this Court speaking through L.C. Bhadoo, J Writ Petition No.2697 of 2003 dated 17.01.2005 needs to be noticed. Learned Judge in that case has observed that the notifications produced in that case is only a proposal for increase of permit and that thereafter there is nothing on record which would go to show that in pursuance of that proposal the number of permits were increased by the State of Bihar or the State of Madhya Pradesh. That observation made by the learned Judge after perusal of the records

940

would also support the writ petitioner and is against the the case of the third respondent. In that view of the matter, the impugned order of the STAT cannot be sustained. The order of the STAT is set aside and the order of the first respondent is confirmed. In the result, the writ petition is allowed. No costs.

Sd/-
Chief Justice